

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION	NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,051		08/25/2003	Corrado Di Cecco	P08032US00/MP	1570
881	7590	09/27/2006		EXAMINER	
		SON PLLC	THALER, MICHAEL H		
	1199 NORTH FAIRFAX STREET SUITE 900				PAPER NUMBER
ALEXANDRIA, VA 22314				3731	
				DATE MAILED: 09/27/2006	

Please find below and/or attached an Office communication concerning this application or proceeding.

M

	Application No.	Applicant(s)				
	10/647,051	DI CECCO, CORRADO				
Office Action Summary	Examiner	Art Unit				
	Michael Thaler	3731				
The MAILING DATE of this communication app Period for Reply	ears on the cover sheet with the c	orrespondence address				
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).						
Status						
1) Responsive to communication(s) filed on						
, ,	- action is non-final.					
3) Since this application is in condition for allowan		secution as to the merits is				
	closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.					
Disposition of Claims		,				
4) Claim(s) 1-20 is/are pending in the application.						
,—	4a) Of the above claim(s) is/are withdrawn from consideration.					
5) Claim(s) is/are allowed.						
6) Claim(s) is/are rejected.						
7) Claim(s) is/are objected to.						
8) Claim(s) 1-20 are subject to restriction and/or e	lection requirement					
Olamina) 1-20 are subject to restriction and/or e	neotion requirement.					
Application Papers						
9) The specification is objected to by the Examiner.						
10)☐ The drawing(s) filed on is/are: a)☐ accepted or b)☐ objected to by the Examiner.						
Applicant may not request that any objection to the o	Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).					
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).						
11) ☐ The oath or declaration is objected to by the Ex	aminer. Note the attached Office	Action or form PTO-152.				
Priority under 35 U.S.C. § 119						
12) Acknowledgment is made of a claim for foreign	priority under 35 U.S.C. § 119(a)	-(d) or (f).				
a) ☐ All b) ☐ Some * c) ☐ None of:	,					
1. Certified copies of the priority documents	s have been received.					
2. Certified copies of the priority documents		on No.				
3. Copies of the certified copies of the prior						
application from the International Bureau	•	3				
* See the attached detailed Office action for a list of the certified copies not received.						
·						
•	·					
Attachment(s)						
1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413)						
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date.						
3) Information Disclosure Statement(s) (PTO/SB/08)	5) Notice of Informal P 6) Other:	atent Application				
Paper No(s)/Mail Date	6)					

Application/Control Number: 10/647,051

Art Unit: 3731

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-19, drawn to an ear duct cleaning device, classified in class 606, subclass 162.
- II. Claim 20, drawn to a method for using an ear duct cleaning device, classified in class 128, subclass 898.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus as claimed can be used to practice another and materially different process. For example, it could be used to clean a nasal cavity instead of an ear duct.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of Application/Control Number: 10/647,051 Page 3

Art Unit: 3731

their different classification, restriction for examination purposes as indicated is proper.

In addition, this application contains claims directed to the following patentably distinct species:

The species of figures 1-7; and

The species of figure 8.

The species are independent or distinct because they differ sufficiently in structure as to make them patentably distinct.

Applicant is <u>also</u> required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims

Application/Control Number: 10/647,051

Art Unit: 3731

are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael

Application/Control Number: 10/647,051

Art Unit: 3731

Thaler whose telephone number is (571)272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

mht 9/18/06 MICHAEL THALER PRIMARY EXAMINER ART UNIT 3731

Page 5